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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,489	07/18/2003	Josh Schreider	PA5311	4579
30448	7590	08/27/2007	EXAMINER	
AKERMAN SENTERFITT			THAKUR, VIREN A	
P.O. BOX 3188			ART UNIT	PAPER NUMBER
WEST PALM BEACH, FL 33402-3188			1761	
MAIL DATE		DELIVERY MODE		
08/27/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/623,489

**Applicant(s)**

SCHREIDER, JOSH

**Examiner**

Viren Thakur

**Art Unit**

1761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but are not deemed persuasive. On page 4, Applicant states that Coffee Cakes etc. only teaches the composition of a cinnamon bun and the configuration and not the composition of a pretzel and questions how Coffee Cakes etc. can possibly teach "both the composition of a cinnamon bun and the composition of a pretzel. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, Coffee Cakes etc. teaches a pretzel and a cinnamon bun. Regarding the pretzel, since the Coffee Cakes reference takes a cinnamon flavored dough and wherein said dough is in the shape of a pretzel, it is respectfully asserted that the cinnamon flavored dough is a pretzel composition. This would not be any different than a cinnamon flavored pretzel. Berry et al. is relied on to teach combining two dough compositions. The placement of a second dough within a first dough would not change the functional utility and is only considered a matter of appearance. The placement of a second dough within a first dough is merely placement used to achieve a desired shape for the purpose of appearance. Furthermore, the majority of the claims are not limited to using a pretzel dough composition and claim 4 for instance actually states wherein the first and second composition are the same.

Applicant's arguments regarding claims 5-7 and Wetzel's Pretzels has been fully considered but is not deemed persuasive. Claim 4 recites wherein the two preselected compositions for each of said first and second elongated dough member are the same. Extending the ends of a dough member to create another member positioned within an opening is still considered an extension of the dough into a desired shape. As stated in the non-final rejection, extending the ends of a pretzel shape dough to form spirals would not be any different than extending the ends to form any other configuration and would only be considered a change in shape that would have been a matter of choice to none having ordinary skill in the art.

On page 5, Applicant states that placement of a second dough member onto a first dough member and positioning a second dough member within the open spaces of a first dough member are two distinct arrangements. The Examiner respectfully asserts however that this merely changes the shape of the final product and is a rearrangement of the positioning of the dough members. Berry et al. provides the teachings for combining two dough compositions, and to place the second dough onto or within a first dough would have been an obvious choice for the ordinarily skilled artisan for the purpose of providing a specific aesthetic appearance to the final product.

Applicant states that the shape of a product may not have a patentable significance where it results in a product which is distinct from the reference product, the particular shape serves an important function. Applicant states that the spiral shape of the second dough member and its positioning results in a food product that combines the taste composition and configuration of a pretzel and cinnamon bun. This has been fully considered but is not deemed persuasive. The combined teachings of the prior art would have provided the taste composition, however the configuration is still considered a matter of orientation.

Wencel Jr., et al. (D426368) was cited in the final rejection as a teaching of a spiraling shape combined with a secondary shape. Kipnis (US 2463112) was cited in the final rejection for the teaching of a dough comprising two compositions, as shown in Figure 24..



KEITH HENDRICKS  
PRIMARY EXAMINER